

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS  
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Administrative Office	(2) MEETING DATE 12/15/2015	(3) CONTACT/PHONE Guy Savage / Assistant County Administrative Officer (805) 781-5011	
(4) SUBJECT Submittal of a report and solicitation of Board direction related to the cultivation of Medical Cannabis (Marijuana), including potential processing of amendments to Titles 22 and 23, the Local Coastal Plan, and the Land Use Element of the General Plan. All Districts.			
(5) RECOMMENDED ACTION It is recommended that the Board receive a report related to the cultivation of Medical Cannabis (Marijuana) and provide direction to staff potentially including a determination as to whether or not your Board wishes to authorize processing of amendments to Titles 22 and 23, the Local Coastal Plan, and the Land Use Element of the General Plan.			
(6) FUNDING SOURCE(S) N/A	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? No
(10) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Presentation <input type="checkbox"/> Hearing (Time Est. ____ ) <input checked="" type="checkbox"/> Board Business (Time Est. <u>120</u> )			
(11) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input checked="" type="checkbox"/> N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: <input type="checkbox"/> 4/5 Vote Required <input checked="" type="checkbox"/> N/A	
(14) LOCATION MAP N/A	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY <input type="checkbox"/> N/A    Date: _____	
(17) ADMINISTRATIVE OFFICE REVIEW This item was prepared by the Administrative Office.			
(18) SUPERVISOR DISTRICT(S) All Districts.			

# County of San Luis Obispo



TO: Board of Supervisors

FROM: Administrative Office / Guy Savage / Assistant County Administrative Officer  
(805) 781-5011

DATE: 12/15/2015

SUBJECT: Submittal of a report and solicitation of Board direction related to the cultivation of Medical Cannabis (Marijuana), including potential processing of amendments to Titles 22 and 23, the Local Coastal Plan, and the Land Use Element of the General Plan. All Districts.

## **RECOMMENDATION**

It is recommended that the Board receive a report related to the cultivation of Medical Cannabis (Marijuana) and provide direction to staff potentially including a determination as to whether or not your Board wishes to authorize processing of amendments to Titles 22 and 23, the Local Coastal Plan, and the Land Use Element of the General Plan.

## **DISCUSSION**

This Board item seeks direction solely on the topic of cultivation of Medical Cannabis (Marijuana). While background and definitions regarding Cannabis; the current status of Medical Cannabis; State legislation including AB 243, AB 266, and SB 643; recreational versus medicinal uses; and various related issues are provided, staff recommends that the Board focus on the cultivation of Medical Cannabis and the specific issues regarding possible ordinance changes required by March 1, 2016 to ensure local control.

### ***Cannabis (Marijuana) Primer and Definitions***

Cannabis passes through distinct phases in its growth to consumption cycle. For the purposes of this Board report and discussion, these phases have been categorized as cultivation, distribution, and use. Cultivation includes the processes, techniques, and methods used in the growth of the flowering plant Cannabis, primarily for the production and consumption of Cannabis flowers also known as "buds." Distribution includes the specific manufacturing processes and transportation of Cannabis products such as dried buds, resin (hashish), and oil products. Use includes the ingestion of Cannabis through smoking, vaporizing, eating, and topical or suppository applications.

### ***Current Status of Medical Cannabis Law in California***

In 1996, California voters approved Proposition 215, which decriminalized cannabis for specific medical purposes. Called the 'California Compassionate Use Act,' Proposition 215 made it legal for patients and their designated primary caregivers to hold and cultivate cannabis for personal medical use, as recommended or approved by a licensed physician. In 2004, legislative statute (SB 420) went into effect to establish statewide guidelines for Prop 215. Most notably, SB 420 allowed patients to form medical cultivation collectives and established a voluntary State ID card system run through county health departments. SB 420 also established guidelines related to the number of plants that patients can possess and cultivate.

### ***Recent State Legislation and Impacts***

In the final hours of the 2015 legislative session, the State Legislature approved and the Governor signed, a package of legislation to create the first statewide licensing and operating rules for medical cannabis cultivators and dispensaries

since Medical Cannabis was decriminalized in 1996. Together, AB 266, SB 643, and AB 243 comprise the California Medical Marijuana Regulation and Safety Act (MMRSA). Following is a brief summary of the legislation, provided by the California State Association of Counties (CSAC):

#### AB 266

AB 266 (for full text see Attachment A) enacts MMRSA, which includes a licensing and regulatory framework for the medical marijuana industry that requires dual (state and local) licenses for medical marijuana businesses. It also establishes a new Bureau of Medical Marijuana Regulation to oversee this multiagency licensing and regulatory effort, relying on expertise from the California Department of Food and Agriculture (CDFA) and the Department of Public Health.

AB 266 also includes a number of detailed provisions including various definitions and aspects concerning enforcement, licensure, testing, packaging/labeling and reporting. Of particular importance are provisions that:

- Protect existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements.
- Allow local governments to adopt ordinances establishing additional standards, requirements, and regulations for local licenses and permits for commercial cannabis activity.
- Retain the power of local jurisdictions to assess fees and taxes on licensed facilities and the business activities of those licensees.
- Allow a county to impose a tax on each delivery transaction.
- Ensure that it would not interfere with an employer's rights to maintain a drug and alcohol free workplace.

#### SB 643

SB 643 (for full text see Attachment B) addresses a wide range of issues pertinent to the overarching framework for medical marijuana including, the establishment standards for physicians and surgeons that prescribe medical marijuana; the assignment of authority and responsibilities to specified state agencies charged with the licensing of medical marijuana activities; track and trace requirements enabling accurate tracking of marijuana products; requirements for pesticide standards for cultivation activities, and licensure suitability provisions. Of particular significance are provisions that:

- Prohibit a licensee from commencing activity under the authority of a state license until the applicant has obtained a local license or permit.
- Require that cultivation be conducted in accordance with state and local laws, as specified.
- Allow local agencies to administer a unique identifier program.
- Authorize licensing authorities and state and local agencies to inspect shipments of medical marijuana and request documentation for current inventory.
- Provide counties with explicit authority to impose taxes on medical marijuana activities and products.
- Direct CDFA to establish an organic program by 2020 and authorizes the new Bureau of Medical Marijuana to establish appellations.
- Include county of origin labeling specifications.

#### AB 243

AB 243 (for full text see Attachment C) primarily addresses the environmental impacts of medical marijuana cultivation. It comprises a number of means including requirements for the Department of Food and Agriculture (CDFA), the Department of Pesticide Regulation (DPR), the State Department of Public Health (DPH), the Department of Fish and Wildlife (DFW), and the State Water Resources Control Board (SWRCB) to promulgate regulations or standards relating to medical marijuana and its cultivation.

Detailed licensing provisions for cultivation are also included in AB 243. The legislation specifies that if a local government does not have land use regulations or ordinances regulating or prohibiting the cultivation of cannabis in place by March 1, 2016, the Department of Food and Agriculture will be the default licensing entity for all such jurisdictions. The bill also directs CDFA, DFW and SWRCB to take various actions to address the environmental damage caused by marijuana cultivation including illegal waste discharges and water diversions.

In addition to the above summary a Medical Cannabis Responsibility Chart (Attachment D) and a summary presentation and regulatory structure overview developed by CSAC and the Rural Counties Representatives of California-RCRC (Attachment E) are provided as additional background information. An overview (Attachment F) created by the League of California Cities regarding the MMRSA is also provided for additional context.

### ***Time Constraints***

AB 243 creates a new section of the Health & Safety Code that provides, in part:

"If a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the division shall be the sole licensing authority for medical marijuana cultivation applicants in that city, county, or city and county." (Health & Safety Code §11362.777(c)(4).)

### ***Permissive Zoning***

County Land Use Ordinance establishes principles of permissive zoning. Under a permissive zoning scheme, uses that are not specifically listed are considered not allowed. Section 22.06.030.C. states that a "land use that is not listed in Table 2-2 or is not shown in a particular land use category is not allowed,..." except where the Planning Director has determined that the proposed use is equivalent in its nature and intensity to a listed use. Section 23.01.041.d. of the Coastal Zone Land Use Ordinance similarly provides that where a proposed land use is not specifically listed in the Land Use Element, "the proposed use shall be deemed not allowed."

Medical Cannabis cultivation is not a specifically allowed use and the Planning Director has not deemed it to be equivalent to another listed use. AB 243 should not, therefore, allow the State to act as sole licensing authority for cultivation in the County. However, because the County has not issued a formal decision to date regarding cultivation under the County's Land Use Ordinances, formal direction in the form of an ordinance is preferable.

In order to not rely solely on permissive zoning and to help ensure local control over the issuance of licenses for the cultivation of Medical Cannabis, the County could enact a local ordinance prior to March 1, 2016. Note that the ordinance should be fully enacted by March 1, 2016, not merely voted upon by the Board. Given the statutorily required 30-day waiting period between vote and enactment for non-urgency ordinances and the adopted 2016 Board schedule, any non-urgency ordinance must be adopted on or before January 26, 2016. Due to significant concerns about the March 1, 2016 deadline, the Assembly Business and Professions Committee, the Assembly Agriculture Committee, and the Assembly Health Committee will be holding a joint informational hearing on January 19, 2016 to begin discussion of clean up and amendments to the MMRSA. Included in these discussions is expected to be some relief from the March 1, 2016 deadline. However, it is not anticipated that updates will be adopted in time to affect the County's processing of a non-urgency ordinance by January 26, 2016.

Urgency ordinances require a 4/5ths vote by the Board and can be effective immediately. Assuming no amendments to the MMRSA, an urgency ordinance could be adopted as late as February 23, 2016.

Failure to enact a local ordinance could result in the State of California - Department of Food and Agriculture (CDFA) being able to issue licenses in accordance with AB 243, section 19332, section g. The State cultivator license types issued could include:

- (1) Type 1, or "specialty outdoor," for outdoor cultivation using no artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises, or up to 50 mature plants on noncontiguous plots.
- (2) Type 1A, or "specialty indoor," for indoor cultivation using exclusively artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises.
- (3) Type 1B, or "specialty mixed-light," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, of less than or equal to 5,000 square feet of total canopy size on one premises.
- (4) Type 2, or "small outdoor," for outdoor cultivation using no artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(5) Type 2A, or “small indoor,” for indoor cultivation using exclusively artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(6) Type 2B, or “small mixed-light,” for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(7) Type 3, or “outdoor,” for outdoor cultivation using no artificial lighting from 10,001 square feet to one acre, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(8) Type 3A, or “indoor,” for indoor cultivation using exclusively artificial lighting between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(9) Type 3B, or “mixed-light,” for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(10) Type 4, or “nursery,” for cultivation of medical cannabis solely as a nursery. Type 4 licensees may transport live plants.

## **Options**

### *Amendments to Titles 22 and 23, the Local Coastal Plan, and the Land Use Element of the General Plan*

The County could pursue amendments to Titles 22 and 23, the Local Coastal Plan, and the Land Use Element of the General Plan that would explicitly ban the cultivation of Medical Cannabis. Since a ban is a more restrictive land use, associated processes such as the development of an Environmental Impact Report (EIR) would likely not be required. Should the Board decide on this course of action, this report serves as information necessary for the Board to initiate processing of amendments regarding Medical Cannabis.

Amendments may also be pursued that would allow the cultivation of Medical Cannabis. Because any such amendments would authorize new uses of land, the California Environmental Quality Act (CEQA) may require preparation of an EIR or other environmental document. This process takes time and would make it virtually impossible to enact ordinances in time to meet the March 1, 2016 deadline.

### *Urgency Ordinance*

The most viable approach to ensuring local control suggests that the Board should pursue an Urgency Ordinance to maintain local control, particularly given the difficult time constraints being driven by evolving legislation. Enactment of an Urgency Ordinance requires a 4/5ths vote of the Board.

The Board may enact an urgency ordinance as an exercise of general police powers under Government Code section 25123. Ordinances enacted under Government Code section 25123 do not automatically expire. Should the Board pursue this path, staff recommends that the ordinance include a provision setting a date for expiration unless the Board resolves to extend the ordinance. Common expiration approaches taken in other local jurisdictions regularly use 6 or 12 month increments.

The Board may also enact an urgency ordinance as an interim zoning ordinance under Government Code section 65858. Any initial ordinances enacted under Government Code section 65858 will expire within 45 days. The Board would then need to pass another ordinance to extend the initial ordinance, up to a total of 2 years. At the end of this 2-year period, the ordinance automatically expires and the County cannot enact a new one.

## ***Considerations***

Staff is requesting specific direction be given relative to the following, non-exhaustive, list of considerations regarding the cultivation of Medical Cannabis.

### ***Number of Plants and Size***

The number of Cannabis plants allowed is a key consideration. On one end of the spectrum is an outright ban (zero plants) and on the other end of the spectrum is no restriction. Several jurisdictions, such as Mendocino County (see Attachment G) have restricted the number of plants. Similarly, the canopy size of a Cannabis grow on a single property may also be restricted in total square footage or as a percentage of the overall lot size.

### ***Location***

Distance from neighbors, schools or other youth facilities, County right-of-way, other grows, and sightlines are common location considerations. Consideration regarding the smell produced during the growth process is a regular complaint of those who live too close to a Cannabis grow.

### ***Indoor versus Outdoor***

Restrictions around the allowance of indoor versus outdoor grows often lead to further discussion about the use of artificial lighting. In particular, shielding or down-casting of artificial light and noise from generators used in the production of power to generate artificial light are important considerations.

### ***Water***

Given the on-going drought, specific provisions regarding water use, erosion, diversion of existing water sources, setbacks from existing water sources, and discharge should be included in any ordinance.

### ***Security***

Many ordinances require security fencing around outdoor grows.

## **OTHER AGENCY INVOLVEMENT/IMPACT**

Departmental representatives from the Sheriff/Coroner, District Attorney, Planning and Building, Agricultural Commissioner, Health Agency (Environmental Health), Human Resources, County Counsel, and Administrative Office provided various inputs to this item. Initial outreach to the San Luis Obispo County Farm Bureau, Chamber of Commerce, and Economic Vitality Corporation has been completed.

If amendments to Titles 22 and 23, the Local Coastal Plan, and the Land Use Element of the General Plan are authorized for processing, action will be sought from applicable agencies and community advisory bodies.

## **FINANCIAL CONSIDERATIONS**

There are no financial considerations directly associated with this item. However, there are broad and explicit financial impacts due to the tax implications of the cultivation, manufacturing, transportation and delivery, and retail sale of Medical Cannabis. These financial impacts could be significant for the County, other local jurisdictions, and businesses. Given the potential changes to MMRSA and the need for additional discussion on how cultivation, manufacturing, transportation and delivery, and retail sale of Medical Cannabis will be locally regulated, it is not feasible to quantify these financial impacts at this time.

## **RESULTS**

Receipt of this item will provide the Board with a high level overview of the necessary considerations to be made regarding to the County's responsibility relative to recently passed medical cannabis legislation. In addition, this item outlines potential next steps to enact a local ordinance prior to March 1, 2016 in order to ensure local control over the

issuance of licenses for the cultivation of Medical Cannabis.

**ATTACHMENTS**

Attachment A – Full text of AB 266

Attachment B – Full text of SB 643

Attachment C – Full text of AB 243

Attachment D – Medical Marijuana Responsibility Chart (AB 243, AB 266, and SB 643)

Attachment E – CSAC–RCRC Presentation and Regulatory Chart

Attachment F – League of California Cities – Marijuana Cultivation Summary

Attachment G – Mendocino County Ordinance